

United States Courts
Southern District of Texas
FILED

May 16, 2024

Nathan Ochsner, Clerk of Court

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

THE LODGES AT SCOTT, LLC,

Plaintiff/Counter-Defendant,

v.

**U.S. BANK TRUST NATIONAL
ASSOCIATION, AS TRUSTEE OF HOF
GRANTOR TRUST 4, AVT TITLE
SERVICES, LLC, AND RF RENOV
MANAGEMENT COMPANY, LLC,**

Defendants/Counter-Plaintiffs.

**U.S. BANK TRUST NATIONAL
ASSOCIATION, AS TRUSTEE OF HOF
GRANTOR TRUST 4,**

Third Party Plaintiff,

v.

ROBERT LEE WISEMAN, JR.,

Third Party Defendant.

Civil Action No. 4:23-cv-4835

**DEFENDANT U.S. BANK’S ORIGINAL
COUNTERCLAIM AND THIRD-PARTY CLAIM**

Defendant/Counter-Plaintiff/Third-Party Plaintiff U.S. Bank Trust National Association, as Trustee of HOF Grantor Trust 4 (“Defendant” or “U.S. Bank”) files this its *Original Counterclaim and Third-Party Claim*, and respectfully shows as follows:

I. ORIGINAL COUNTERCLAIM AND THIRD-PARTY CLAIM

U.S. Bank brings this it is Original Counterclaim and Third-Party Claim, and respectfully states as follows:

a. Parties

1. This Original Counterclaim and Third-Party Claim is brought by Defendant/Counter-Plaintiff/Third-Party Plaintiff U.S. Bank Trust National Association, as Trustee of HOF Grantor Trust 4 (“Defendant” or “U.S. Bank”).

2. Plaintiff/Counter-Defendant The Lodges at Scott, LLC (“Plaintiff”) is a limited liability company organized under the laws of the State of Texas. It has previously appeared in this action through counsel.

3. Third-Party Defendant Robert Lee Wiseman, Jr. (“Wiseman”) is an individual and citizen of Texas. Wiseman is a guarantor under the subject Loan Agreement and may be served at his residence, 4801 Woodway Drive, Suite300E, Houston, Texas 77022.

b. Property

4. The allegations in the Petition relate to the foreclosure sale of certain real property located in Harris County, Texas. This real property is identified by the following common street addresses:

- 2807 Scott Street, Houston, TX 77004
- 3512 Drew Street, Houston, TX 77004
- 3514 Drew Street, Houston, TX 77004
- 3516 Drew Street, Houston, TX 77004
- 3518 Drew Street, Houston, TX 77004
- 3509 Tuam Street, Houston, TX 77004¹
- 3521 Tuam Street, Houston, TX 77004
- 3525 Tuam Street, Houston, TX 77004
- 3513 Tuam Street, Houston, TX 77004

¹ 3509 Tuam Street is not specifically identified in the list of property addresses on the Notice of Foreclosure Sale; however, it is included in the legal description. *See Complaint, Exh. 1. WK Props., Inc. v. Perrin SA Plaza, LLC*, 648 S.W.3d 513, 518-19 (Tex. App.—San Antonio 2021, no pet.) (holding that legal description from appraisal-district records recited in deed controlled over conflicting street addresses); *White v. Harrison*, 390 S.W.3d 666, 678-79 (Tex. App.—Dallas 2012, no pet.) (“[T]he legal description of a property will control over a common description or street address.”); *cf Stribling v. Millican DPC Partners, LP*, 458 S.W.3d 17, 20-21 (Tex. 2015). (explaining that when metes-and-bounds description conflicts with general property description, the more specific metes-and-bounds description controls).

- 3517 Tuam Street, Houston, TX 77004

and more particularly described as:

A TRACT OF LAND CONTAINING 1.220 ACRES (53,160 SQUARE FEET) BEING COMPRISED OF A 0.0790 ACRE TRACT BEING OUT OF LOTS 11 AND 12, BLOCK 21 IN LEELAND PARK ADDITION, AS RECORDED IN VOLUME 1, PAGE 121, OF THE HARRIS COUNTY MAP RECORDS (HCMR), AS RECORDED UNDER CLERK'S FILE NO. 20140570796 OF THE OFFICIAL PUBLIC RECORDS OF HARRIS COUNTY, TEXAS, AND LOTS 3, 4, 7, 8, 9, 10, THE REMAINDER OF LOTS 1 AND 2, AND THE REMAINDER OF THE NORTH ONE HALF OF LOTS 11 AND 12, ALL OUT OF BLOCK 21, OF SAID LEELAND PARK ADDITION, SAID 1.220 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS: BEGINNING AT A 5/8 INCH IRON ROD WITH TRI-TECH CAP SET IN THE EAST LINE OF SCOTT STREET (RIGHT OF WAY VARIES), BEING THE SOUTHWESTERN CUT-BACK CORNER OF A CALLED 0.0132 ACRE TRACT AS SET FORTH IN CF NO. 20120448768 OF THE OPRHCT AND THE WESTERNMOST NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT OF LAND; THENCE NORTH 62 DEGREES 36 MINUTES 29 SECONDS EAST ALONG CUTBACK CORNER OF SAID 0.0132 ACRE TRACT, A DISTANCE OF 21.00 FEET TO A 5/8 INCH IRON ROD WITH TRI-TECH CAO SET IN THE SOUTH LINE OF DREW STREET (40 FOOT ROW) COMMON WITH THE NORTH LINE OF LOT 12, BLOCK 21, OF SAID LEELAND PARK ADDITION, SAID POINT BEING THE NORTH END OF A CUTBACK CORNER IN SAID 0.0132 ACRE TRACT AND THE NORTHERNMOST NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT OF LAND; THENCE SOUTH 72 DEGREES 36 MINUTES 21 SECONDS EAST ALONG THE SOUTH ROW LINE OF SAID DREW STREET COMMON WITH THE NORTH LINE OF BLOCK 21, OF SAID LEELAND PARK ADDITION, A DISTANCE OF 254.77 FEET TO A 5/8 INCH IRON ROD WITH TRI-TECH CAP SET AT THE INTERSECTION OF THE SOUTH ROW LINE OF SAID DREW STREET AND THE WEST ROW LINE OF LUCINDA STREET (50 FOOT ROW), SAID POINT BEING THE NORTHEAST CORNER OF LOT 7, BLOCK 21, OF SAID LEELAND PARK ADDITION AND HEREIN DESCRIBED TRACT OF LAND; THENCE SOUTH 17 DEGREES 23 MINUTES 39 SECONDS WEST WITH THE WEST ROW LINE OF SAID LUCINDA STREET COMMON WITH THE EAST LINE OF BLOCK 21, OF SAID LEELAND PARK ADDITION, A DISTANCE OF 200.00 FEET TO A 5/8 INCH IRON ROD WITH TRI-TECH CAP SET AT THE INTERSECTION OF THE WEST ROW LINE OF SAID LUCINDA STREET AND THE NORTH ROW LINE OF TUAM STREET (40 FOOT ROW), SAID POINT BEING THE SOUTHEAST CORNER OF LOT 6, BLOCK 21, OF SAID LEELAND PARK ADDITION, AND THE HEREIN DESCRIBED TRACT OF LAND; THENCE NORTH 72 DEGREES 36 MINUTES 21 SECONDS WEST ALONG THE NORTH LINE OF SAID TUAM STREET COMMON WITH THE SOUTH LINE OF BLOCK 21 OF SAID LEELAND PARK ADDITION, FOR A DISTANCE OF 246.98 FEET TO A CUT X SET IN THE NORTH LINE OF SAID TUAM STREET COMMON WITH THE SOUTH LINE OF LOT 2, BLOCK 21, OF SAID LEELAND PARK ADDITION, SAID POINT BEING THE SOUTH END OF A CUTBACK CORNER IN A CALLED 0.0368 ACRE TRACT AS SET FORTH IN CF

NO. 20120448769 OF THE OPRHCT AND THE SOUTHERNMOST SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT OF LAND; THENCE NORTH 28 DEGREES 44 MINUTES 48 SECONDS WEST ALONG A CUTBACK CORNER IN SAID 0.0368 ACRE TRACT, A DISTANCE OF 20.44 FEET TO A 5/8 INCH IRON ROD WITH A TRI-TECH CAP SET IN THE EAST LINE OF SAID SCOTT STREET SAID POINT BEING THE NORTH END OF A CUTBACK CORNER IN SAID 0.0368 ACRE TRACT AND THE WESTERNMOST SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT OF LAND; THENCE NORTH 13 DEGREES 04 MINUTES 29 SECONDS EAST ALONG THE EAST LINE OF SAID SCOTT STREET AND SAID 0.0368 ACRE TRACT, AND ACROSS LOT 1, BLOCK 21, OF SAID LEELAND PARK ADDITION, A DISTANCE OF 86.08 FEET TO A 5/8 INCH IRON ROD WITH TRI-TECH CAP SET, ON THE EAST ROW LINE OF SAID SCOTT STREET, SAID POINT BEING THE NORTHEAST CORNER OF SAID 0.0368 ACRE TRACT, THE SOUTHWEST CORNER OF A CALLED 0.0790 ACRE TRACT AS SET FORTH IN CF NO. 20140570796 OF THE OPRHCT AND AN ANGLE POINT IN THE WEST LINE OF THE HEREIN DESCRIBED TRACT; THENCE NORTH 15 DEGREES 54 MINUTES 17 SECONDS EAST ALONG THE EAST ROW LINE OF SAID SCOTT STREET AND THE WEST LINE OF SAID 0.0790 ACRE TRACT, A DISTANCE OF 50.02 FEET TO A 5/8 INCH IRON ROD WITH TRI-TECH CAP SET IN THE EAST LINE OF SAID SCOTT STREET, SAID POINT BEING THE NORTHWEST CORNER OF SAID 0.0790 ACRE TRACT, THE SOUTHWEST CORNER OF SAID 0.0132 ACRE TRACT, AND AN ANGLE POINT IN THE WEST LINE OF THE HEREIN DESCRIBED TRACT OF LAND; THENCE NORTH 17 DEGREES 07 MINUTES 38 SECONDS EAST ALONG THE EAST ROW LINE OF SAID SCOTT STREET COMMON WITH THE EAST LINE OF SAID 0.0132 ACRE TRACT ACROSS LOT 12, BLOCK 21, OF SAID LEELAND PARK ADDITION, A DISTANCE OF 35.21 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT OF LAND CONTAINING 1.220 ACRES (53,160 SQUARE FEET) (“the Property”).

C. Jurisdiction and Venue

5. This Court has jurisdiction over the controversy under 28 U.S.C. Section 1332 because there is complete diversity between Plaintiff, U.S. Bank and Wiseman and the amount in controversy exceeds \$75,000.00.

6. Plaintiff is a limited liability company organized under the laws of the State of Texas. The citizenship of a limited liability company is “determined by the citizenship of all its members.” *Tewari De-Ox Sys., Inc. v. Mountain States/Rosen, L.L.C.*, 757 F.3d 481, 483 (5th Cir. 2014).

7. There are two members of Plaintiff, Urban Row Holdings, LLC, and Urbanika Group, LLC. Both of these members are Texas limited liability companies.

8. Urbana Row Holdings, LLC, has two members, Endeavor One, LLC, and Wiseman Homes, LLC.

9. Upon information and belief, the sole members of Urbana Row Holdings, LLC, are Lysmel Teresa Lorenzo and Kelsey Leann Gledhill, both of whom are residents and citizens of the State of Texas.

10. Upon information and belief, the sole member of Wiseman Homes, LLC, is Robert Lee Wiseman, a resident and citizen of the State of Texas.

11. Urbanika Group, LLC, has two members, Promotora Mexicana Inmobiliaria SA DE CV (“Promotora”), and GGM Inter Capital, LLC.

12. Promotora is a Mexican corporation with its principal place of business in Mexico, making it a citizen of Mexico.

13. Upon information and belief, GGM Inter Capital, LLC, has one member, Jorge Garcia, who is a resident and citizen of Mexico.

14. Plaintiff, therefore, is a citizen of Texas and Mexico for diversity-jurisdiction purposes.

15. U.S. Bank is a national association and trustee of a traditional trust. When a trustee is the real party in interest to the suit, its citizenship—not the citizenship of the beneficiaries of the trust—controls for purposes of diversity jurisdiction. *Navarro Sav. Assoc. v. Lee*, 446 U.S. 458, 464–66 (1980); *Mfrs. and Traders Trust Co. v. HSBC Bank USA, N.A.*, 564 F.Supp.2d 261, 263 (S.D.N.Y. 2008). When the trustee has the power to sue or be sued in its own name (and does so), it is the real party in interest. *Navarro*, 446 U.S. at 464–66; *Rivas v. U.S. Bank N.A.*, No. H-14-

3246, 2015 U.S. Dist. LEXIS 74505 **3–4 (S.D. Tex. June 9, 2015). A national banking association is considered a citizen of the state in which it is located. 28 U.S.C. § 1348. Its location is determined by the state of its main office, as established in the bank’s articles of association. *Wachovia Bank, NA v. Schmidt*, 546 U.S. 303, 318 (2006). U.S. Bank is, and at all times relevant to this action was, a national association bank with its main office located in Cincinnati, Ohio. A national bank is a citizen of the state where its main office, as designated in its articles of association, is located. *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303, 307 (2006). Thus, U.S. Bank is a citizen of Ohio, and no other state, for purposes of diversity jurisdiction.

16. Wiseman is an individual who is a citizen of Texas.

17. The Property served as collateral for a mortgage loan for which U.S. Bank was the lender and Plaintiff was the borrower. The Property was sold at a foreclosure sale that occurred on November 7, 2023 for \$1,884,595.00. At the time of the foreclosure sale, the total debt on the Loan was \$1,933,577.71, leaving a deficiency of \$48,982.71.

18. Venue is proper in the Southern District of Texas, Houston Division, under 28 U.S.C. Section 1391(b)(2) because this counterclaim and third-party claim arises out of a suit pending in the Southern District of Texas. Further, this counterclaim and third-party claim concerns title to real property located in Harris County, Texas.

D. Facts

19. On or about July 29, 2022, Plaintiff signed a Note in the amount of \$1,905,000.00 payable to RFLF 7, LLC (“the Note”). The Note was secured by a Deed of Trust (“Deed of Trust”) on the Property. The Deed of Trust was recorded in the Official Records of Harris County, Texas, on August 2, 2022 at Instrument No. RP-2022-396352. The Note and Deed of Trust are hereafter referred to as the Loan Agreement. The Loan Agreement matured on August 1, 2023.

20. Wiseman on or about July 29, 2022 signed a Guaranty, wherein he guaranteed full payment of the Loan Agreement to RFLF 7, LLC.

21. An Assignment of Deed of Trust was recorded in the Official Records of Harris County, Texas, on October 5, 2023, reflecting a transfer of the Deed of Trust from RFLF 7, LLC, to U.S. Bank. The instrument number for this Assignment is RP-2023-382647.

22. On October 16, 2023, U.S. Bank, through Mackie Wolf Zientz & Mann, PC, which had been retained by U.S. Bank's servicer, RF Mortgage Services Corporation, provided Plaintiff and Wiseman with Notice of Foreclosure Sale, indicating that a non-judicial foreclosure sale would occur on November 7, 2023.

23. As the default on the Loan Agreement was not cured, the Property was sold at a foreclosure sale that occurred on November 7, 2023 for \$1,884,595.00 on a credit bid. Fees and costs charged in connection with the sale were \$501.07. At the time of the foreclosure sale, the total debt on the Loan was \$1,933,577.71, leaving a deficiency of \$49,483.78.

E. Cause of Action – Deficiency Claim Against the Lodges at Scott, LLC

24. The foregoing paragraphs are incorporated by reference for all purposes.

25. Following the foreclosure sale, a remaining balance of \$49,483.78 is due and owing by the Lodges at Scott, LLC.

26. U.S. Bank further seeks to recover its attorney's fees and costs as provided in the Loan Agreement and Chapter 38 of the Texas Civil Practice and Remedies Code.

F. Cause of Action – Guaranty Against Wiseman

27. The foregoing paragraphs are incorporated by reference for all purposes.

28. Wiseman is obligated in the Guaranty to the deficiency balance of \$49,483.78.

29. U.S. Bank further seeks to recover its attorney's fees and costs as provided in the Guaranty and Chapter 38 of the Texas Civil Practice and Remedies Code.

WHEREFORE, U.S. Bank requests that it have and recover \$49,483.78 from the Lodges at Scott, LLC and Wiseman; prejudgment interest; post-judgment interest; and its attorney's fees and costs. U.S. Bank asks that it be awarded all other relief to which it may be entitled.

Respectfully submitted,

By: /s/ Mark D. Cronenwett
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**ATTORNEYS FOR DEFENDANT U.S.
BANK**

CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2024, a true and correct copy of the foregoing was served in the manner described below on the following:

Via ECF Notification:

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